

In the High Court of Punjab and Haryana, at Chandigarh.

1. Letters Patent Appeal No. 612 of 1992

Date of Decision: 10.8.2009

Municipality, Patiala and Another

...Appellants

Versus

The Presiding Officer, Labour Court, Patiala and Another

...Respondents

2. Letters Patent Appeal No. 619 of 1992

Municipality, Patiala and Another

...Appellants

Versus

The Presiding Officer, Labour Court, Patiala and Another

...Respondents

3. Letters Patent Appeal No. 620 of 1992

Municipality, Patiala and Another

...Appellants

Versus

The Presiding Officer, Labour Court, Patiala and Another

...Respondents

4. Letters Patent Appeal No. 621 of 1992

Municipality, Patiala and Another

...Appellants

Versus

The Presiding Officer, Labour Court, Patiala and Another

...Respondents

5. Letters Patent Appeal No. 622 of 1992

Municipality, Patiala and Another
...Appellants

Versus

The Presiding Officer, Labour Court, Patiala and Another
...Respondents

6. Letters Patent Appeal No. 623 of 1992

Municipality, Patiala and Another
...Appellants

Versus

The Presiding Officer, Labour Court, Patiala and Another
...Respondents

7. Letters Patent Appeal No. 624 of 1992

Municipality, Patiala and Another
...Appellants

Versus

The Presiding Officer, Labour Court, Patiala and Another
...Respondents

8. Letters Patent Appeal No. 625 of 1992

Municipality, Patiala and Another
...Appellants

Versus

The Presiding Officer, Labour Court, Patiala and Another
...Respondents

9. Letters Patent Appeal No. 626 of 1992

Municipality, Patiala and Another

...Appellants

Versus

The Presiding Officer, Labour Court, Patiala and Another

...Respondents

10. Letters Patent Appeal No. 627 of 1992

Municipality, Patiala and Another

...Appellants

Versus

The Presiding Officer, Labour Court, Patiala and Another

...Respondents

11. Letters Patent Appeal No. 628 of 1992

Municipality, Patiala and Another

...Appellants

Versus

The Presiding Officer, Labour Court, Patiala and Another

...Respondents

AND

12. Letters Patent Appeal No. 629 of 1992

Municipality, Patiala and Another

...Appellants

Versus

The Presiding Officer, Labour Court, Patiala and Another

...Respondents

**CORAM: HON'BLE MR. JUSTICE T.S.THAKUR, CHIEF JUSTICE.
HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA.**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. H.P.S. Ghuman, Advocate
for the appellants.

Mr. Arun Palli, Senior Advocate
with Mr. Divanshu Jain and Mr. Tushar Sharma,
Advocates for respondent No.2 (In all the appeals)

T.S. Thakur, C.J. (Oral)

These appeals arise out of similar but separate orders, all dated 26.3.1992, passed by a learned Single Judge of this Court whereby Civil Writ Petitions No. 7570 to 7575, 8249, 8250 to 8253 and 9105 of 1991 have been disposed of with a direction to the petitioner-Municipal Committee, who is the appellant herein, to pay 30% of back wages to the respondent-workmen for the period commencing from the date of their termination till the date of their reinstatement. The facts leading to the filing of the writ petitions and the present appeals may be briefly stated as under:

The respondents, in these appeals, were employed by the appellant-Municipal Committee, Patiala, as Malis-cum-Chowkidars/Beldars in which capacity they continued working for a period ranging between one to one and a half years. Their services having been terminated suddenly without any notice or enquiry, whatsoever, they appear to have raised an industrial dispute

culminating in a reference to the Labour Court for determination of the following common question:-

“Whether termination of services of Sh. Amarjeet Singh (name of the workman in each case is different) is justified and in order? If not, to what relief/extent amount of compensation is he entitled?”

On receipt of the reference, the Labour Court framed two issues for determination, namely:-

- 1) Whether the reference is bad in law as per preliminary objections of the written statement?
- 2) Whether the order of termination of services of the workman is justified and in order?

The parties were permitted to adduce evidence in support of their respective cases, upon appreciation whereof, the Labour Court eventually came to the conclusion that there was nothing wrong with the reference made by the Government and that the termination of services of the workmen, being without any charge sheet and any enquiry, whatsoever, against them, was clearly illegal. The Court also held that the case of the Municipal Committee that the workmen had themselves abandoned their appointments and left, was totally unconvincing. The Labour Court, accordingly, set aside the termination and directed reinstatement of all the workmen/respondents with continuity of service. Since the Committee had failed to produce any cogent evidence to prove that the workmen had remained gainfully employed during the

period of their forced idleness, the Labour Court also declared the workmen entitled to their reinstatement with continuity of service and full back wages.

Aggrieved by the order passed by the Labour Court, the Municipal Committee filed Civil Writ Petition Nos. 7570 to 7575, 8249, 8250 to 8253 and 9105 of 1991 in this Court which were heard and eventually disposed of by N.C. Jain, J., as his Lordship then was, by similar but separate orders, all dated 26.3.1992, as noticed earlier. The learned Single Judge was of the view that the issues raised by the Committee, in the writ petitions, involved disputed questions of facts, which the Court was not inclined to examine. It was further observed that the workmen had consented to the disposal of the writ petitions with a direction to the Committee to pay 30% of the actual wages, due to them for the period they remained out of job and to reinstate the workmen with continuity of service. Learned Single Judge observed:-

“XXX XXX XXX XX

Since disputed questions of facts are involved, this Court is disinclined to go into the same. When the case was in progress during the arguments on certain dates of hearing, the workmen were agreeable to have 50 per cent of the back wages. Today at the very outset, the counsel for the workmen after taking instructions from them who are present in Court, has consented that his clients are willing to have back wages to the extent of 30 per cent of the actual wages which are due to them

provided they are ordered to be reinstated forthwith with the benefits of continuity of service. It has further been submitted by the counsel for the workmen that his clients may also be considered for regularization of their services favourably and if this is ordered, the workmen would be satisfied with only 30 per cent of the back wages as per the wages under the law”.

The present appeals question the correctness of the above judgment and order, as noticed above.

When these appeals came up before us on 4.8.2009, Mr. Arun Palli, learned senior counsel appearing for the respondents, pointed out that the respondents, except Ram Pal who had passed away during the pendency of writ petition, had been regularized in service as Beldars, by the appellant-Committee.

Mr. Ghuman appearing for the appellant-Municipal Committee, Patiala, which has in due course become a Corporation, sought time to verify the true position and make his submissions. Mr. Ghuman submits, today, on instructions, that all the respondents, except deceased Ram Pal, have been regularized in service as Beldars pursuant to a policy formulated by the Government in that connection. He further stated that so far as payment of back wages is concerned, while the payment of 30% of back wages to all other respondents remains to be made, the amount payable to Jagiro widow of Ram Pal has already been released in her favour. He urged that this Court could, notwithstanding the said subsequent developments and regularization of services of the

respondents, examine whether the order passed by the Labour Court and upheld by learned Single Judge was legally valid in the eyes of law. He contended that the very fact that the respondents have been regularized in service does not make any material difference, especially when the respondents had not been appointed on the basis of any valid process of recruitment at the time of their initial appointment, and that regularization of employees who had joined the service without going through a proper selection process, has not been favoured by the Hon'ble Apex Court.

On behalf of the respondents, Mr. Palli, on the other hand, contended that the issue regarding regularization of services of the respondents does not strictly speaking, arise for consideration in these proceedings as the appellant-Corporation had, on its own, regularized their services upon the respondents fulfilling the conditions stipulated for such regularization in terms of the policy formulated by the Government. He further argued that once the regularization had been ordered by the Corporation, it was no longer open to it to find fault with the method of recruitment adopted by the Municipality or grudge the regularization which was due to the respondents on the Municipal Corporation's own showing.

In so far as payment of back wages is concerned, Mr. Palli pointed out that the respondents had agreed to forego 70% of their back wages only because the Court was issuing a direction for their regularization. At any rate, the amount of back wages, according to Mr. Palli, was less than a sum of Rs.6,000/- per employee, having regard to the fact that the respondents were receiving Rs.540/- to Rs.600/- per

month only and the period for which such wages were payable was limited to only 32 months between the date of their termination and the date of their reinstatement. He submitted that at any rate the entire claim towards back wages for the period from the date of termination till the date of reinstatement could be limited to Rs.5,000/- in each one of these cases in full and final settlement of the claim of the respondents in that connection to avoid any confusion or controversy arising between the parties as to the quantification of the liability in future.

There is, in our opinion, considerable merit in the submissions made by Mr. Palli. The termination of the services of the respondents has been found by the Labour Court to be wholly unjustified as the same was neither preceded by any charge sheet or enquiry against any one of them nor any allegation of misconduct was ever made against the said respondents. The version given by the Corporation that the respondents had, on their own, abandoned their jobs was also rightly disbelieved by the Labour Court. In the circumstances, there was nothing wrong with the direction issued by the Labour Court that termination of services of the respondents was legally bad. So also the consequential direction that the Committee shall reinstate the respondents with back wages could not be found fault with having regard to the fact that the termination itself was found to be illegal and there was nothing on record to show that the respondents had been gainfully employed during the period they were forced out of employment. Be that as it may, the respondents had, in the writ petition, consented to the order passed by the Labour Court being modified to the extent that instead of full back wages they would be satisfied in case

back wages to the extent of 30% were awarded in their favour and their services regularized. The learned Single Judge accepted that submission and accordingly disposed of the writ petitions holding that the Corporation would reinstate the respondents with continuity of service and 30% back wages to them. The order regarding payment of back wages was, however, stayed by this Court in the present appeals and regularization, if any granted, directed to remain subject to the ultimate outcome of these proceedings. It is in that background that the respondents appear to have been considered for regularization in accordance with the scheme which the Government has formulated and found eligible for the same as early as in the year 2001 onwards. Nine years after the said regularization, it is neither open to the appellant-Corporation nor otherwise fair to put a question mark on the said regularization. The respondents have served as regular employees of the Corporation all these years. Even otherwise, the award made by the Labour Court is of the year 1990 i.e. nearly two decades old. We, therefore, have no hesitation in holding that the question of regularization of the respondents on the basis of the award made by the Labour court is no longer open to any debate or discussion, the same having been settled by the Municipality on its own in accordance with the scheme formulated in that regard.

The only question that remains to be considered is whether we ought to interfere with the direction issued by learned Single Judge to the extent he has awarded back wages to the respondents at the rate of 30% of such wages. The said direction, as noticed earlier, had proceeded on the consent of the respondents given during the course of

arguments before learned Single Judge. But for the said consent the respondents may have been able to support the directions of full back wages also. At any rate, we need not go into the question whether the respondents are entitled to anything more than 30% back wages as Mr. Palli has reiterated his submissions made before learned Single Judge that the respondents are satisfied with 30% back wages only. In fairness to Mr. Palli, we must also record that he was agreeable to this Court putting at rest the controversy as to the amount actually payable to the respondents by quantifying the same at Rs.5,000/- in each one of the cases. Such being the position and keeping in view the fact that the amount is not so fabulous so as to make it difficult for the Corporation to pay the same, we see no compelling reason for us to interfere with the direction issued by learned Single Judge. We, accordingly, dismiss these appeals with the direction that the arrears of Rs.5,000/- payable to each one of the respondents except to the widow of Ram Pal who has already been paid, shall be released in favour of the said respondents, expeditiously, but not later than six months from the date of this order, failing which the said amount shall start earning interest at the rate of 6% per annum from the date the period of six months expires till the date of actual payment. No costs.

(T.S.Thakur)
Chief Justice

(Kanwaljit Singh Ahluwalia)
Judge

August 10, 2009
“DK”